



**ACT HUMAN RIGHTS  
COMMISSION**

Australian Capital Territory

# **Operations Protocol**

June 2019 (updated December 2020)

The Vision of the ACT Human Rights Commission is:

*An inclusive community that respects and realises the rights of everyone*

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# 1. Overview and Structure of ACT Human Rights Commission

The ACT Human Rights Commission (the Commission) is an independent agency established by the [Human Rights Commission Act 2005](#) offering a range of services, including:

- oversight of systemic issues, review of laws, and advice to government and others regarding human rights compliance
- independent complaint handling covering a range of service providers, and discrimination matters
- advocacy for children, young people and adults experiencing vulnerability
- consultation with children and young people to enable their participating in decision-making about matters that affect them
- advocacy, information, therapeutic services and support to victims of crime
- community education, training and information about human rights.

The ACT was the first jurisdiction in Australia in 2004 to enact a [Human Rights Act](#), which provides an explicit statutory basis for respecting, protecting and promoting most civil and political rights, and some economic, social and cultural rights. Human rights are universal and enjoyed by everyone in the ACT regardless of gender, religious belief, nationality, race or any other status.

Human rights underpin all of the Commission's activities in each area of our work. There are eight distinct roles at the Commission, which are held by four Commissioners. Commission members are required to act in a way that promotes the collegiate nature of the Commission. The current members of the Commission are:

## **Dr Helen Watchirs – President and Human Rights Commissioner**

The President is responsible for the Commission's governance, finance, resources and corporate administration, with specific statutory functions for systemic matters and reporting obligations. The President of the Commission is also the Human Rights Commissioner. The role of the Human Rights Commissioner is to promote discussion and educate the community about human rights; to provide systemic oversight and advice to Government and others on compliance with human rights; to review the effect of Territory laws on human rights, including monitoring places of detention, and to seek leave to intervene in significant court and tribunal human rights cases.

## **Ms Jodie Griffiths-Cook - Public Advocate and Children and Young People Commissioner**

The role of the Public Advocate and Children and Young People Commissioner (PACYPC) is to protect and promote the rights and interests of people in the ACT whose condition or circumstances make them vulnerable to abuse, exploitation or neglect; and to consult with, listen to and seriously consider the views of children and young people in ways that promote their participation in decision-making. The responsibilities of the PACYPC are underpinned by a range of functions including advocacy (individual and systemic), representation, investigation, and monitoring. Some of these functions are specific to children and young people, and others encompass people with complex disability needs, including those with mental health conditions and/or forensic patients.

### **Ms Karen Toohey - Discrimination, Health, Disability and Community Services Commissioner**

The role of the Discrimination, Health, Disability and Community Services Commissioner is to consider complaints about unlawful discrimination, sexual harassment and vilification under the [Discrimination Act 1991](#); as well as complaints about the provision of health services; services for people with a disability, services for children and young people and services for older people. The Commissioner also considers complaints about breaches of the [Health Records \(Privacy and Access\) Act 1997](#).

### **Ms Heidi Yates - Victims Support and Victims of Crime Commissioner**

The role of the Victims of Crime Commissioner is to protect and promote the rights of victims of crime in the ACT. This includes monitoring and promoting compliance with the governing principles for victims of crime, administering the financial assistance scheme for victims of crime, and overseeing Victim Support ACT which delivers a range of advocacy and support services for victims. The Victims of Crime Commissioner also performs the statutory functions of the Domestic Violence Project Coordinator.

## **2. Introduction**

This Protocol is required under s 18C of the [Human Rights Commission Act 2005](#), which provides that the President of the Human Rights Commission must develop and publish an Operations Protocol every three years, after consulting with the other Commissioners. The Protocol is available on the Commission's [website](#) and provides information about:

- How to access the Commission's services
- What are relevant Governance documents
- What happens at Commission meetings
- How we undertake advocacy functions
- How we report on systemic matters
- How enquiries and complaints generally will be received by the Commission
- How complaints are dealt with within the Commission
- How complaints are referred within the Commission, or to other complaint handling entities; and
- How we deal with Commission-initiated considerations

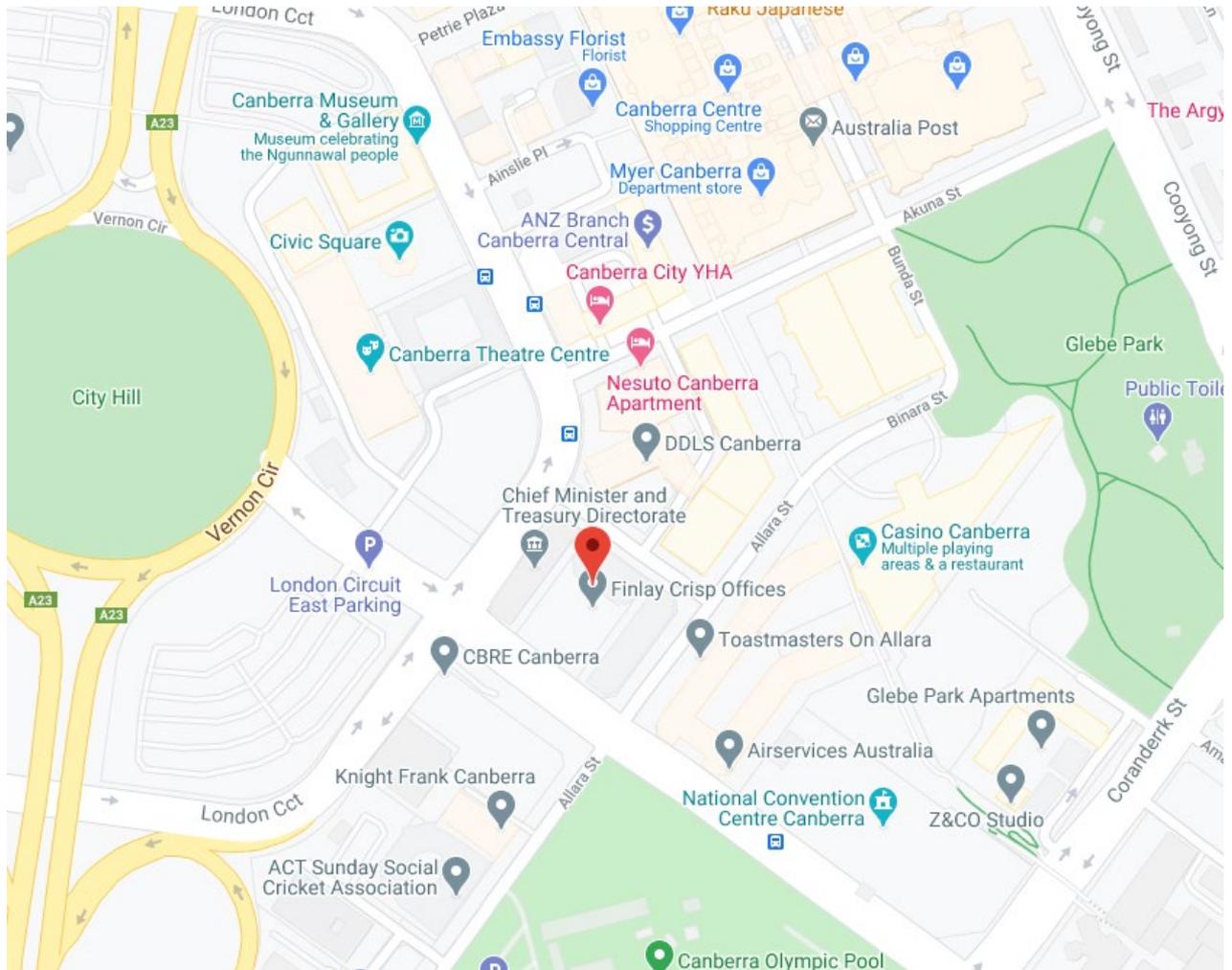
## **3. How to access the Commission**

The Commission is committed to making any reasonably needed adjustments so that you can engage with us. This includes the use of interpreters, assistive technology and involving support people of your choosing.

The Commission is located at 5 Constitution Avenue, Canberra ACT (see map below) with reception on the plaza level. The Commission is open Monday to Friday, between 9:00am-5:00pm, except on public holidays.

It is recommended that you call or email to make an appointment before visiting the Commission.

Making an appointment ensures that a staff member is free to speak with you. Appointments can be made Monday to Friday between 9.00am-4.30pm by phoning on (02) 6205 2222, or (02) 6205 1666 to use TTY, or emailing to [human.rights@act.gov.au](mailto:human.rights@act.gov.au).



When you arrive at 5 Constitution Avenue, please proceed to the Commission’s reception on the left-hand side of the lobby. If the counter is unattended during business hours, please go the security desk and they will ask someone from the Commission to meet you at the Commission’s reception to assist you.

#### 4. Relevant Governance Documents

The Commission’s six signature **Values** of Respect, Collaboration, Integrity, Innovation, Accessibility and Independence guide the day-to-day actions, behaviours and decisions in the delivery of services to the community. As well as this Operations Protocol, the Commission is required under the Human Rights Commission Act to develop other governance documents, details of which are set out below.

##### Strategic Plan 2017-20

Our *Strategic Plan 2017-20* sets out our Vision, Mission, Values, Priorities and areas of developing our capabilities. It is [published on our website](#). Our mission is to achieve our vision of ‘an inclusive community that respects and realises everyone’s rights’ by:

- leading positive systemic change
- engaging and educating the community
- delivering accessible services that empower and support people and
- providing effective oversight.

Our priorities are to:

- **Make human rights relevant to everyone** – helping the community understand and exercise their rights and fulfil their obligations; and raising awareness of what we do, our impact and how to access help and support.
- **Lead systemic change to address vulnerability** – reforming laws, policies and practices that impact on tights; having effective oversight that promotes accountability; and proactive monitoring to improve systems and address concerns.
- **Enhance services and service delivery** – ensuring our service provision recognises and realises everyone’s rights; delivering accessible and client-centred services; having timely and effective complaint handling.
- **Increase community engagement** – taking a strategic approach to engagement activities and event participation; and providing the community with opportunities to engage and express their views to develop solutions together.

### **Client Service Charter**

The Commission believes that all people deserve to be treated with dignity, and we are committed to ethical, prompt, respectful and helpful client service. Our *Client Service Charter 2020-2022* was developed under s18B of the HRC Act and explains what clients can expect from the Commission, how we provide services and how to offer feedback to help improve our services. You can access the Charter on our [website](#).

### **Governance and Corporate Support Protocol**

The Commission developed a *Governance and Corporate Support Protocol 2017-20* under s18A of the HRC Act in 2017 that articulates our respective roles and responsibilities as an independent statutory authority which relies on the Justice and Community Safety Directorate to provide assistance with some corporate support functions, such as financial accounting, auditing, human resources, information management and technology support. You can access our Governance and Corporate Support Protocol on our [website](#).

## **5. What happens at Commission meetings**

The Commissioners meet at least once a month at the Commission Conference Room for approximately 90 minutes. A whole of Commission staff meeting is also usually held monthly. The President, all Commissioners, and the Administrative Assistant to the President as minute-taker, should normally be present at Commission meetings. There will be a quorum if three Commissioners holding office are present, and attendance may be via telephone or video-link if necessary. The Finance and Administration Manager will present a Report on corporate issues. Staff members can be invited to the meeting to address a proposal that the Commission will be making a decision about (e.g. the Communications Officer).

### **Agenda & Minutes**

The draft Agenda is circulated at least forty-eight (48) hours in advance of the meeting.

Items to be considered and, if necessary, voted on at Commission meetings include:

- Minutes of previous meetings

- Corporate Report by Finance and Administration Manager, including:
  - finances/budget
  - staffing and recruitment
  - workplace health and safety
  - information and communications technology
  - Policies and Procedures
  - FOI, Risk Register and Business Continuity Plan
  - HRC Strategic and Performance Indicators
- Priority areas identified in Strategic Plan 2017-2020:
  - *Community engagement*: Activities and media/communications
  - *Systemic Change to Address Vulnerability*: Oversight of detention facilities, pending/completed Commission legal/policy submissions, and responses to external consultation processes
  - *Service Delivery*: Statistics on team operations (e.g. enquiries and complaint numbers, Financial Assistance Scheme applications)
  - Cultural Safety Charter
  - Social Inclusion Plan
- Other Business
- Media, communications and branding
- Commission-initiated considerations
- Systemic reviews
- Requests for policy advice and law reform
- Reports and Recommendations
- Requests for advice from MLAs
- Proposals for changes to the HRC Act and related legislation

Draft Minutes are provided to Commission members for approval within ten (10) working days of the meeting. The Commission members should provide amendment or approval within three (3) working days of receipt.

### **Voting**

The President presides at all meetings at which they are present. If the President is not present, the Commissioners may elect someone else to preside. Questions arising at a meeting are determined by a majority of the President and Commissioners present and voting. The President has a deliberative vote and, in the event of an equality of votes, has a casting vote.

## Statutory rules for meetings

Division 3.9 of the [Human Rights Commission Act 2005](#) sets out the Commission meeting rules, which are attached to this Operations Protocol (Appendix 1).

## 6. Advocacy

There are two main types of advocacy performed by Commissioners, systemic and individual.

- **Systemic advocacy** occurs where Commissioners advocate on behalf of a group of people experiencing vulnerability to achieve an outcome that is in the interests of many people in the community. This usually means facilitating change in the way a service is provided so that service improvements can benefit people both now and in the future. It can involve conducting an investigation and/or evidence-based research, which can then inform and influence legislative and policy reform, programs and practices to improve the outcomes and opportunities for people experiencing vulnerability.
- **Individual advocacy** occurs where Commissioners advocate on behalf of an individual person to achieve an outcome that upholds their rights and is in their interests, such as providing or obtaining services, or changing the way services are provided. Individual advocacy may be undertaken in different ways and includes brokering services such as counselling, and attending court or a tribunal hearing, participating in case conferences or meetings, convening multi-agency panel meetings or by negotiating with, fostering and supporting agencies to achieve improved services that uphold the rights and interests of people experiencing vulnerability, and who may be subject to abuse or exploitation.

All Commissioners perform advocacy roles, but two Commissioners have specific statutory advocacy roles – the Public Advocate and Children and Young People Commissioner; and the Victims of Crime Commissioner. Referrals for individual advocacy can be made by contacting the Commission, and a member of the relevant team will be allocated to assist you.

The **Public Advocate and Children and Young People Commissioner** has legislative responsibility under the [Human Rights Commission Act 2005](#) for promoting, protecting, upholding and advocating for the rights and interests of people in the ACT who are experiencing vulnerability. This role extends to all persons whose situation or condition gives rise to a need for protection from abuse, exploitation or neglect, or a combination of those things, such as people involved with mental health services, disability services and children and young people with child youth protection services.

Under s 27B of the [Human Rights Commission Act 2005](#), the Public Advocate has the following advocacy functions for people with a disability and children and young people:

- Fostering the provision of services and facilities;
- Supporting the establishment of organisations that support people with a disability and children and young people;
- Encouraging the development of programs benefitting people with a disability;
- Promoting the protection of people from abuse and exploitation.

The role of the Children and Young People Commissioner under s 19B(3) is to:

- help improve services for children and young people in the ACT,
- promote the rights of children and young people,
- consult with children and young people in ways that promote their participation in decision making,
- encourage other organisations to listen to children and young people, and seriously consider their views in decision making, and
- provide advice to government and community agencies about legislation, policies, practices and services that affect children and young people.

The **Victims of Crime Commissioner** engages in systemic and individual advocacy for victims of crime. Section 11 of the *Victims of Crime Act 1994* sets out the Commissioner's advocacy functions including:

- advocating for the interests of victims of crime;
- advocating for the interests of affected people under the *Mental Health Act 2015*;
- consulting on and promoting reforms to meet the needs or priorities of victims of crime;
- developing educational and other programs to promote awareness of the interests of victims of crime;
- ensuring victims receive information and assistance they need; and
- advising the Minister on matters in relation to the interests of victims of crime.

The Victims of Crime Commissioner is also responsible for trying to resolve concerns in relation to non-compliance with the Governing Principles for the Treatment of Victims of Crime.

## 7. Systemic Reviews

A systemic review looks into broader system-wide issues in areas such as justice, health, children, disability, community, older persons and other services, as well as places of detention. A systemic review can take several forms, and there may be overlap in the statutory powers under which it is performed by Commissioners.

A **systemic review**, which generally looks into broader system-wide issues, is different to a **Commission-initiated consideration** (see part 10 below), which is generally about the particular circumstances of an individual.

The Commission and President will consider the following particular issues when identifying matters for Systemic Review:

- whether the issue involved a limitation of rights under the [Human Rights Act](#)
- where the Minister has directed the Commission to Review a matter
- whether the issue is relevant to the work of more than one Commissioner, and may be a focus for collaboration between Commissioners
- where a third-party report is warranted (see part 10 below)

- whether the issue is a matter of public importance, or involves serious public safety or other public interest issues eg violence
- the detriment potentially suffered by individuals if the Commission did or did not take such action
- the vulnerability of the group affected, eg children, people with certain types of disability, or detainees
- where the issue is a matter affecting the system for the protection of the rights of users of prescribed services (or a class of user) as a whole, rather than a matter affecting an individual alone
- whether it is a matter affecting the system for the provision of prescribed services (or a class of prescribed services) as a whole, rather than a matter affecting an individual alone; and
- The scope of the systemic review and the capacity, including available resources, of the Commission to undertake that review.

While all Commissioners are able to undertake reviews, the President has explicit statutory functions in relation to systemic reviews, including:

- reporting to the Minister and other appropriate entities about a Review arising from the complaints jurisdiction of the Commission (section 14(1)(d))
- reporting to the Minister and other relevant entities regarding a Report arising from a Minister's direction (section 17)
- a Commission-initiated report – where the Commission elects to undertake a consideration of a matter that could be the subject of a complaint, or any other matter relevant to the Commission's functions, such as section 41 of the [Human Rights Act 2004 \(section 84\)](#)
- an own-initiative report to the Minister about any matter of public importance related to the Commission, its functions or a matter that may be complained about (section 87); or
- providing a third party a Report that arises from a complaint consideration process, where such a Report is in the public interest, as well as other specific criteria (section 83).

The President may also report in writing to the Minister about:

- a matter of public importance relating to the commission, including how the commission handles complaints under the Act;
- a matter affecting the system—
  - for the protection of the rights of users of prescribed services (or a class of user) as a whole, rather than a matter affecting an individual alone; and
  - for the provision of prescribed services (or a class of prescribed services) as a whole, rather than a matter affecting an individual alone.

Section 6A of the HRC Act defines a 'prescribed service' as a:

- health service;
- disability service;

- service for children and young people;
- service for older people;
- service for victims of crime.

The President will consult with other Commissioners and take into account the factors listed above in considering such a systemic review.

Similarly, Commissioners have separate specific functions to advise on systemic matters including:

- The Victims of Crime Commissioner's functions under the Victims of Crime Act to advise the Minister on matters relating to the interest of a victim.
- The Discrimination Commissioner's functions to promote the right of people to be free from unlawful discrimination and related functions.
- The functions of the Public Advocate to encourage the development of programs that benefit people with a disability and related functions.
- The Human Rights Commissioner's functions regarding providing advice to government on matters relevant to the operation of the Human Rights Act.

Generally individual Commissioners are able to instigate such systemic reviews or advice using their existing resources, although, as a courtesy, all other Commissioners will be notified prior to a systemic review commencing. With the consent of the relevant Commissioner, resources may be provided from one area of the Commission to another. This is further discussed below in relation to shared resources.

The President will generally make the findings of a systemic review public and in some cases it will be tabled in the Legislative Assembly by the Minister (for example a human rights audit under section 41 of the Human Rights Act). However, publication will not always proceed and will be determined by how best to address the issues identified and the legislative powers used to conduct the review.

## **8. Enquiries**

Anyone can contact the Commission with an enquiry. Reception staff will seek basic information so that they can direct the enquiry to the most appropriate part of the Commission. Depending on the nature of your enquiry, you may be directed to any of the four Commissioner's teams that make up the Commission: President and Human Rights Commissioner; Public Advocate and Children and Young People Commissioner; Discrimination, Health, Disability and Community Services Commissioner; and Victims of Crime Commissioner.

The amount of information provided about the enquiry to the Reception staff is up to the person. The person can choose not to provide information about why they are making an enquiry; however without providing some basic information it is hard for the Reception staff to direct the call within the Commission.

Reception staff are not able to provide information about a matter that the Commission is handling to a third party.

The Commission staff may ask questions about your enquiry and if you identify as:

- an Aboriginal and/ or Torres Strait Islander person;
- a person from a Culturally and Linguistically Diverse background; and/or
- a person with a disability.

This information is collected to enable us to help you with any assistance or accommodation you may require, such as an interpreter, and is reported in our databases to generally monitor the accessibility of our services. A hearing loop is available in our reception, interview and conference room areas, and we strive to make our premises fully accessible. You are also entitled to reasonable assistance from our staff to put a complaint in writing. If you need help in filling out our forms, you can ask for an appointment with one of our Intake officers. More information about the Commission is available on our [website](#).

## 9. Confidentiality

### Third Party Disclosure

Consistent with our Privacy Policy, personal information collected by the Commission is not released to third parties, unless disclosure is permitted.

Personal information will generally only be released to third parties when consent is provided to share the information, or otherwise permitted, or required, under relevant legislation including:

- [Information Privacy Act 2014](#)
- [Health Records \(Privacy and Access\) Act 1997](#)
- [Children and Young People Act 2008](#)
- [Victims of Crime Act 1994](#)
- [Victims of Crime \(Financial Assistance\) Act 2016](#)
- [Human Rights Commission Act 2005](#).

### Internal Discussions

The Commission may share the information a person provides to us *within* the Commission, including for the purposes of:

- assessing the best area of the Commission to handle your enquiry
- determining if you have already contacted the Commission about your matter
- informing other areas of our work including systemic reviews and commission-initiated considerations.

### Children's participation and engagement

The Commission is committed to a child-safe, child-friendly Canberra. The Commission has statutory functions to consult with children and young people in ways that promote their participation in decision-

making, and to listen to and seriously consider the views of children and young people. The Commission is also committed to ensuring the Commission is accessible to children and young people, and to being sensitive to the cultural diversity of children and young people.

The more that we encourage children and young people to be vocal about issues that matter, the more likely it is that children and young people will feel that they will be listened to if they raise concerns about things that they personally experience. Giving children and young people a voice is the first step to empowering them; to giving them the strength to speak out about both societal issues and about personal issues.

Children and young people are more likely to seek assistance, speak up about their concerns, or to make a complaint, if they feel their views are valued and welcomed. The Commission affirms a child or young person has the right to participate in all aspects of social life and the shared understanding that empowering them to do so will have positive effects on the broader Australian community.

The Commission encourages approaches both from children and young people directly, and from those supporting children and young people.

## 10. Services for Victims of Crime

The Commission is also committed to ensuring the provision of efficient and effective services for victims of crime in the ACT and monitoring and promoting compliance with the governing principles for the treatment of victims. The Victims of Crime Commissioner's role includes advocating for the interests of victims as well as overseeing Victim Support ACT (VSACT) services.

The Victims of Crime Commissioner is appointed as the ACT Domestic Violence Project Coordinator. In this capacity, the Commissioner is a member of the ACT Domestic Violence Prevention Council, the peak advisory body to the Minister on matters relating to domestic violence. Ms Yates also Chairs the ACT Family Violence Intervention Program Coordinating Committee and is a member of the ACT Victims Advisory Board and the Liquor Advisory Board.

### Concerns and Complaints

The [Victims of Crime Act 1994](#) (s 4) outlines the governing principles for the treatment of victims of crime. These principles apply to agencies who are responsible for the administration of justice. The Victims of Crime Commissioner must try to resolve concerns raised by a victim in relation to non-compliance with the governing principles. The Victims of Crime Commissioner can require the agency involved to provide certain documentation to assist in resolving the concern.

A victim can raise a concern with the Commissioner by contacting Victim Support ACT. Existing clients of Victim Support ACT who identify a concern in relation to the Governing Principles may also be referred to the Commissioner for assistance. The Commissioner's Executive Officer is usually the primary contact for such concerns.

### Victim Support ACT

Victim Support ACT helps people who have experienced a crime in the ACT. This includes victims, their families and people who witness a crime. Our main services are:

1. Victim Services

2. Court Support Program; and
3. Financial Assistance Scheme

All Victim Support ACT services are free and confidential.

### *Victim Services*

We support victims of crime and their families in many ways including:

- Counselling
- Helping you with your rights in the criminal justice system
- Giving you information about reporting crime to police
- Giving you information about what to expect at court
- Helping you to apply for financial assistance
- Helping you prepare a Victim Impact Statement for court
- Referring you to other services

You do not need to report a crime to police to get help from Victim Services.

Most people contact Victim Support ACT by phone (02 6205 2222) for an initial conversation with an intake team member. Sometimes you will be referred to Victim Support ACT by the police or another agency. Someone from Victim Support ACT will call you to have a chat about what supports you might need.

If you would prefer to speak to someone face-to-face, you can also attend the office.

### *Court Support Program*

The Court Support Program can help if you need support attending court to give evidence. We may also be able to provide you with support if you are applying for a Family Violence Order or Personal Protection Order. Court Support is delivered by highly skilled, trained volunteers.

If you are interested in court support, please contact Victim Support.

### *Financial Assistance Scheme*

Financial assistance is available to victims of crime in the ACT to help pay for goods and services that they need to help them recover. You may be eligible to receive financial assistance if you had an injury (physical or psychological) because of a violent crime. You may also be able to receive financial assistance if you are related to someone who has experienced crime.

In most cases, a report to police is required to access financial assistance.

If you would like more information about how to apply for the Financial Assistance Scheme you can phone Victim Support. We can send you an application pack or help you to find the online application form. If you would like assistance to complete an application, one of our trained volunteers can meet with you or assist you over the phone. Some people also choose to get legal advice when they are making a Financial Assistance Scheme Application. Free advice is available from agencies including Legal Aid ACT.

## 11. Complaints handled by the Commission

We believe that all people deserve to be treated with dignity and respect. Like all public servants in the ACT, our staff have obligations under the [Human Rights Act](#) to take human rights into account in their decision-making and actions. The Commission provides an independent, fair and accessible process for the resolution of complaints. We can deal with complaints about:

- Disability services
- Discrimination
- Health services (including Victim Support ACT)
- Services for children and young people
- Services for older people
- Sexual harassment
- Victimisation
- Vilification.

### Who can make a complaint?

You can make a complaint to the Commission directly, or in some cases on behalf of someone else. Parents, carers or guardians can make a complaint on behalf of their children or a person they have guardianship for. The Commission can also authorise a person to act on your behalf if we are reasonably satisfied that you are not able to make a complaint yourself, and you are unable to authorise somebody else to do it for you. If the complaint is about discrimination, the incident must have happened to you or the person on whose behalf you are complaining.

Complaints are usually made in writing, and the complaint forms are available on the Commissions [website](#). Commission staff are able to help put the complaint in writing. If you, or someone else, need help filling out the complaint form please make an appointment and a staff member will assist you.

When handling complaints, the Commission follows the principles of natural justice, which means that:

- the person who handles the complaint is impartial and unbiased;
- the person or organisation the complaint is about has the right to know about the complaint and to provide a response to your allegations; and
- the complainant and the person or organisation the complaint is about have the right to know the information that the Commission relies on to make decisions.

The Commission generally only accept complaints that are less than two years old. If the issue happened before that timeframe, please speak with Commission staff as there may be exceptional reasons we can take into account that prevented the complaint being made earlier.

## **Complaints dealt with by the Commission**

To decide if the complaint falls within the Commission's jurisdiction, Commission staff will ask if the issue occurred in the ACT, when it happened, what happened, and what you would like as an outcome.

When the Commission accepts a complaint for consideration, it will be provided to a complaint handler, who will manage the complaint by seeking information from the person or organisation the complaint is about, and will provide updates on the progress of the complaint.

During the review process the Commission can ask the complainant, or anyone involved in the complaint to provide information, eg witnesses or experts. There are times when the Commission may issue a formal direction for someone to provide information or documents that are relevant to the complaint.

The complainant will also be given information provided to the Commission from the person or organisation the complaint is about. The complaint handler will provide information to all parties when a decision has been made at the conclusion of the process.

## **Complaints referred within the Commission or to other agencies**

Sometimes a complaint has more than one issue that may need to be looked at. For example, if a complaint is made about a disability service and the person needs advocacy, the Disability Services Commissioner and Public Advocate may jointly look at the complaint.

If the Commission forms the view that a complaint needs to be referred to another Commissioner, the complainant will be contacted. Commission staff will explain why the decision was made and ask permission to refer the matter to the other Commissioner.

There are times when information provided by a complainant may be provided to another agency without the consent of the complainant. This will only occur where there is a risk to the safety of the complainant or someone else, or a risk to the general public.

There may be times when the Commission cannot investigate a complaint because it is outside the Commission's jurisdiction. If that occurs, Commission staff will contact the complainant and explain why referring the complaint to another agency is appropriate. For example:

- a discrimination complaint relating to a Commonwealth agency in the ACT may be referred to the Australian Human Rights Commission;
- a complaint about ACT Policing may be referred to the ACT Ombudsman;
- a complaint relating to a matter that occurred in another State or Territory may be referred to the corresponding complaint handling body in that State or Territory or to the Australian Human Rights Commission; or
- a matter involving unfair dismissal, but which does not involve discrimination may be referred to the Fair Work Commission.

## **Conciliation**

The Commission seeks to provide an independent and fair process for the resolution of complaints by the process of conciliation. Sometimes the best way to resolve the complaint is for the complainant and the person or organisation the complaint is about to meet and talk, if they agree - this is called conciliation.

The purpose of conciliation is to find a resolution that can be agreed. Conciliation is led by an expert conciliator from the Commission who will make sure that both the complainant and the person or organisation the complaint is about have the opportunity to be heard. Conciliation will generally cover:

- the issues outlined in the complaint and the impact that these have had;
- other issues that may have arisen; and
- possible solutions to reach a resolution of the complaint.

Having conciliation does not mean the complaint has been proven. The aim of conciliation is to talk about the complaint to seek agreement and a resolution.

The Commission can also continue to look into a complaint that we have referred for conciliation but the conciliation process is separate from this process. We will not use any information discussed in the conciliation process, unless all parties explicitly agree to this.

### **Closure of a Complaint**

At the end of the complaint process the Commission will close the complaint. When the Commission closes a complaint, a letter is sent to the complainant and to the person or organisation the complaint is about. This letter explains why the complaint has been closed and if there are any more steps that the Commission will take, or that the person or organisation complained about needs to take.

If an agreement or resolution has been made the Commission staff can help draft that agreement. A copy of the agreement will be provided to both the complainant and the person or organisation the complaint is about.

If the complaint was about discrimination, written agreement has to be provided by all parties and it is registered with the ACT Civil and Administrative Tribunal (ACAT) and becomes an order. If a discrimination complaint is closed, has been withdrawn, or not successfully resolved, the Commission must offer the complainant the option to take their complaint to the ACAT. A complaint can only be referred to ACAT if the complainant agrees. ACAT can formally assess that facts and law relevant to the case, and is empowered to provide resolution of the matter, which is binding on the parties.

The Commission aims to have a resolution to a complaint within 70 days from receipt of the complaint. That timeframe may be extended if there are delays in the provision of information, or more information is required. If conciliation is used or attempted to reach a resolution, the timeframe for resolution is within 250 days.

## **12. Commission-initiated consideration**

The Commission can look into matters on its own initiative and commence an investigation. A commission-initiated consideration does not have an individual complainant, but the investigation would be of public interest. Factors the Commission considers to determine if a commission-initiated consideration should occur include:

- The matter raises systemic issues, or may significantly affect an individual;
- The matter raises serious public safety or other public interest issues;
- The matter has a particular impact on a vulnerable group of people; and

- The outcome available as a result of the Commission looking into a matter on its own initiative.

The HRC Act requires that a commission-initiated consideration must, as far as practicable, be conducted as if it were a consideration of a complaint. Therefore, commission-initiated considerations will generally be managed by the Discrimination, Health, Disability and Community Services Commissioner and her team. As a courtesy, the Commissioner will notify other Commissioners of a commission-initiated consideration. As with systemic reviews, resources may be provided from another area of the Commission with the prior consent of that Commissioner.

### **Recommendations and Adverse Comments**

At the conclusion of a complaint about a service, or a commission-initiated consideration, a report may be written and this may include recommendations. The person or agency that the recommendation relates to must provide a response to the Commission about the actions taken to comply with the recommendations.

If the Commission makes a recommendation, it must state a reasonable time within which the action should be taken. It can be an offence if the person or agency fails to tell the Commission what action has been taken about the recommendation. The Commission can publish or report about an entity's failure to do something recommended, or attend an interview or provide information to the Commission. However, prior to doing so, the Commission must give the entity a written notice that—

- give details of the entity's failure to which the notice relates;
- explain that the Commission proposes to publish the entity's name and details of the entity's failure; and
- invites submissions about the proposed publication within the time stated in the notice (not less than two weeks after the day the entity is given the notice).

There may be times when the outcome of a complaint or commission-initiated consideration may include adverse comments about a person. Before the adverse comment is included in a report, the Commission will contact the person to advise them of the intention to make the adverse comment and provide that person an opportunity to provide a response.

## **13. Sharing Resources**

The Commission strives at all times to act collegiately and share expertise and resources across teams to further the strategic aims of the organisation. This is particularly so for the President's team whose functions are to support the work of the whole organisation.

The President's Team includes central corporate functions, administration, finance, communications and Aboriginal and Torres Strait Islander liaison.

To ensure the organisation can meet its strategic goals, all Commissioners should be kept informed of how resources are being utilised across the organisation. Commissioners will, as far as practicable, notify all Commissioners about:

- Media liaison, ideally in advance
- Social media messages

- Commission-initiated considerations, systemic reviews or other work that is likely to require significant resources
- Meetings and correspondence with Ministers and Directors-General
- Advice requests from Members of the Legislative Assembly

The Commission strives at all times to act collegially, however if there is a disagreement as to the allocation of resources, this is settled at a meeting of Commissioners.

## **Communications/Media**

The President will endeavour to make centralised resources available for communication and media activities. This will include managing whole-of-commission branding. The Commission's [Governance and Corporate Support Protocol](#) with the Justice and Community Safety Directorate requires the President to notify the Minister and Directorate of media contact. To facilitate this, Commissioners will inform the President and relevant members of her team of any media liaison.

### *Branding*

The Human Rights Commission Act and Victims of Crime Act contemplate individual Commissioners roles including promotion of specific functions and services. Commissioners may elect to use individual brands, consistent with the overall Commission-brand and key messages. However, communication and correspondence referring to, or signed by, more than two Commissioners should be presented under Human Rights Commission branding.

## **Legal Support**

The Commission's [Governance and Corporate Support Protocol](#) with the Justice and Community Safety Directorate requires the President to provide advice on behalf of the Commission to the Directorate in relation to draft Cabinet Submissions. The Protocol also notes that it is desirable for the President, on behalf of the Commission, to provide the Director-General with an information copy of any brief or other material submitted to the Minister.

Many law reform and policy proposals will also engage human rights. As well as obligations to act and make decisions consistently with human rights as a public authority,<sup>1</sup> section 15 of the HRC Act also places a specific obligation on the Commission to act in accordance with human rights when exercising its functions. Any legislative or policy proposal advanced by the Commission will satisfy the minimum requirements for compatibility with the HR Act

Therefore, the Human Rights Commissioner's legal team provides coordination and legal policy support including:

- Assessing Cabinet Submissions that come to the Commission for comment for issues that are relevant to other Commissioners
- Coordinating responses to Cabinet Submissions and government proposals to be signed-off by the President
- Providing advice, training and support on human rights issues

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<sup>1</sup> Part 5A of the Human Rights Act.

- Providing initial and general advice on legal issues as they arise (noting that formal advice should be sought from the Government Solicitor's Office)

To assist in this work, Commissioners will make the Human Rights Commissioner's legal team aware of proposals regarding law reform, policy change or requests for advice from MLAs. This includes proposals they initiate, or that come to their attention from outside the organisation.

#### *Advice to MLAs*

Under the Commission's Governance and Corporate Support Protocol with the Justice and Community Safety Directorate the President may, on behalf of the Commission, provide advice directly to Members of the Legislative Assembly without the need to notify the Attorney-General, the Minister for Justice or JACS.<sup>2</sup> The Protocol notes that if the President/HRC provides formal written advice on a draft Bill to any Member of the Assembly, it will normally be posted on the Commission website at the appropriate time.

## **14. Recruitment**

Commissioners will be responsible for recruitment of staff within their own teams, in consultation with the Finance and Administration Manager to confirm such recruitment is within their funding envelope. As required under ACT Government legislation and policies, where Commissioners chair recruitment panels, the President must sign off as delegate.

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<sup>2</sup> As specified in the ALP and Greens Agreement for the Ninth ACT Legislative Assembly, Appendix 3 – Executive Reform, section (4).

## APPENDIX 1: Statutory rules for meetings

### 30 Time and place of commission meetings

- (1) Meetings of the commission are to be held when and where it decides.
- (2) However, the commission must meet at least once each month.
- (3) The president may call a meeting of the commission.
- (4) The president, when calling a meeting, must give the other members reasonable notice of the time and place of the meeting.

### 31 Presiding member at meetings

- (1) The president presides at all meetings at which the president is present.
- (2) If the president is absent, the member chosen by the members present presides.

### 32 Quorum at meetings

Business may be carried on at a meeting of the commission only if at least 3 members of the commission are present.

### 33 Voting at meetings

- (1) At a meeting of the commission each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has the deciding vote.

### 34 Individual with more than 1 role

- (1) This section applies if—
  - (a) a person holds 2 or more positions under this Act; and
  - (b) the person is a member of the commission because of each of the positions.

#### Example

The disability and community services commissioner may be appointed as the health services commissioner.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The person is only entitled to 1 vote at commission meetings.
- (3) In working out whether 3 members are present at a meeting for section 32 (Quorum at meetings), the number of members is taken to be the number of individuals who are members.

#### Example

If the discrimination commissioner is also the human rights commissioner, the number of members is taken to be 4. Therefore, 2 members (rather than 3) would need to be present at a meeting to carry on business.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## 35 Conduct of meetings etc

- (1) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a commission member taking part to hear what each other member taking part says without the members being in each other's presence.

### **Examples**

a phone link, a satellite link, an internet or intranet link

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) A commission member who takes part in a meeting conducted under subsection (1) is taken, for all purposes, to be present at the meeting.
- (3) A resolution is a valid resolution of the commission, even if it is not passed at a meeting of the commission, if—
  - (a) notice of the resolution is given under procedures decided by the commission; and
  - (b) all members agree, in writing, to the proposed resolution.
- (4) The commission must keep minutes of its meetings.